

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDIAN HARBOR INSURANCE COMPANY,

Plaintiff,

- against -

THE CITY OF SAN DIEGO,

Defendant.

CALIFORNIA STATE ASSOCIATION OF  
COUNTIES EXCESS INSURANCE AUTHORITY  
and INSURANCE COMPANY OF THE STATE  
OF PENNSYLVANIA,

Defendant-Intervenors.

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12 Civ. 5787 (JGK)  
13 Civ. 3246 (JGK)  
13 Civ. 4029 (JGK)

ORDER

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#  
DATE FILED: 10/3/13

JOHN G. KOELTL, District Judge:

The parties have submitted substantially the same proposed Judgment to the Court. The only difference between the parties' proposed Judgments is that the defendant and defendant-intervenors proposed adding language to the plaintiff's proposed Judgment specifying that summary judgment was granted "on the sole ground that notice was untimely as a matter of law" with respect to the three insurance claims at issue (the Grande North Claim, the 235 on Market Claim, and the Centex Claim).

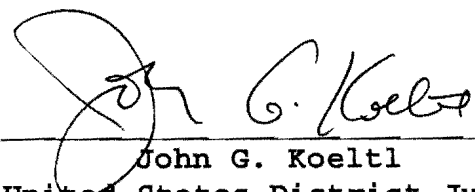
In advance of the motion for summary judgment, the plaintiff and Defendant City of San Diego agreed to an "early summary judgment phase limited to the issue of whether Indian Harbor is entitled to a judgment of no duty to defend or

indemnify, as a matter of law, solely on the grounds of late notice, without a showing of any resulting prejudice, with respect to the claims tendered by the city." Case Scheduling Order, Indian Harbor Ins. Co. v. City of San Diego, No. 12 Civ. 5878 (S.D.N.Y. July 27, 2012). Moreover, this Court's Opinion and Order on the plaintiff's motion for summary judgment addressed specifically the limited issue of "whether Indian Harbor is entitled to a judgment of no duty to indemnify the City on the sole ground that the City failed to provide timely notice of its claims to Indian Harbor." Indian Harbor Ins. Co. v. San Diego, No. 12 Civ. 5787, 2013 WL 5340380, at \*6 (S.D.N.Y. Sept. 25, 2013). Accordingly, the Court's Judgment in this case reflects that the issue addressed in the September 25, 2013 Opinion and Order was limited in this way.

All parties agree that the Court's Opinion and Order granting Indian Harbor's motion for summary judgment is a basis for dismissing all three lawsuits (Nos. 12 Civ. 5787, 12 Civ. 3246, and 12 Civ. 4029), and that the Judgment should constitute final disposition of all three suits.

SO ORDERED.

Dated: New York, New York  
October 3, 2013

  
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John G. Koeltl  
United States District Judge